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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEAN BEAVER and LAURIE BEAVER,
et al.,

Plaintiffs,

vs.

TARSADIA HOTELS, a California
Corporation *et al.*,

Defendants.

Case No. 11-CV-1842-GPC (KSC)

**ORDER RE DISTRIBUTION OF
RESIDUAL SETTLEMENT FUNDS**

17 On December 20, 2019, Class Counsel filed a final status report and request for
18 an order paying residual amounts to the Claims Administrator. (Dkt. No. 324.)

19 This class action alleged violations of the disclosure requirements under the
20 Interstate Land Sales Full Disclosure Act concerning the sale of condominium units at
21 the Hard Rock in San Diego, CA. (Dkt. Nos. 1, 69.) After years of contentious
22 litigation, the parties settled. On September 28, 2017, the Court granted Plaintiffs'
23 motion for final approval of class action settlement and judgment and Plaintiffs'
24 application for attorneys' fees and costs, and service awards. (Dkt. No. 314.) On May
25 9, 2018, the Court granted approval of the distribution of settlement funds to Class
26 Members. (Dkt. No. 322.) On June 12, 2018, Class Counsel filed a status report
27 informing the Court that the Claims Administrator made a clerical error and underpaid
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1 one Class Member by \$180,342.16 and the rest of the class, in aggregate, were overpaid
2 by the same amount. (Dkt. No. 323-1, Brasefield Decl. ¶ 4.) The Claims Administrator
3 took immediate steps to remedy the error and used its own funds to pay the underpaid
4 Class Member. (*Id.*)

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6 The final status report states that 100% of the class members have received and
7 cashed their settlement distribution checks. (Dkt. No. 324 at 2.) 624 class members
8 received checks totaling \$33,724,038.46. (Dkt. No. 324-1, Sperry Decl. ¶ 8.) After
9 payment of court approved attorney fees and expenses, class representative service
10 awards, class member awards, administration fees and expenses, tax payments,
11 appraiser fees, and private investigator fees, the settlement account has a balance of
12 \$48,550.70. (*Id.* ¶ 7.) The excess balance is due to the interest accrued on the account
13 and the remaining funds for private investigator fees not used. (*Id.*) Plus, the account
14 currently accrues interest at an average of \$85/month. (*Id.*) Remaining are unbilled
15 administration fees and expenses concerning post-distribution work that total
16 \$20,112.69. (*Id.* ¶ 9.) Therefore, the remaining residual amount is \$28,438.01.

17 Class Counsel requests that \$20,112.69 for unpaid administration fees and
18 expenses be paid to the Claims Administrator and the remaining residual amount of
19 \$28,438.01 be paid to the Claim Administrator to partially reimburse it for paying
20 \$180,342.16 of its own funds to correct a clerical error. (Dkt. No. 324 at 2.)
21 Alternatively, Class Counsel notes that if the Court would prefer another distribution to
22 class members, it will instruct the Claims Administrator to proceed accordingly. (*Id.* at
23 2-3.)

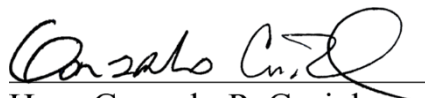
24 When this error was noted, Class Counsel's status report, filed on June 12, 2018,
25 noted that "if at the end of the distribution process, there are funds remaining in the
26 settlement fund, class counsel and GCG may request that those funds be used to repay
27 GCG up to the \$180,342.16 that it paid to Stanzaz, LLC, before any second distribution
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1 is made to class members.” (Dkt. No. 323 at 2.) Accordingly, in the final status report,
2 Class Counsel requests that the entire amount remaining in the settlement fund be paid
3 to the Claims Administrator to pay current unpaid fees and partially reimburse it for
4 paying \$180,342.16 from its own funds. (Dkt. No. 324.) However, Class Counsel has
5 provided no legal or contractual basis to support this distribution.
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7 In fact, the Distribution Plan, referenced in the Court’s order granting final
8 approval of class action settlement, (Dkt. No. 314 at 32), provides that “any leftover
9 Settlement Administration costs, shall be distributed pro rata to Class members who
10 cashed their checks, unless Plaintiffs’ Counsel, with District Court approval, deems the
11 residual too small to efficiently distribute, in which event the residual will be paid *cy*
12 *pres* to an appropriate charity or non-profit suggested by Plaintiffs and approved by the
13 District Court.” (Dkt. No. 273-7, Schrag Decl., Ex. E.) Class Counsel fails to explain
14 with legal authority its divergence from the Distribution Plan. Unless otherwise shown,
15 Plaintiffs must comply with the Distribution Plan, which was approved by the Court on
16 September 28, 2017, that any residual amounts be distributed to either to class members
17 or to a *cy pres*.

18 IT IS SO ORDERED.

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20 Dated: January 7, 2020

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22 Hon. Gonzalo P. Curiel
23 United States District Judge
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